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Social Justice: The Secular Point of View

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Introduction: After 'secularism', 'Social Justice' is a very important concept in India, about which social scientists and Indian politicians differ much in perception and application of such precept in practice. The concepts of Social Justice and Secularism are thus much discussed and debated not only in the Parliament and Supreme Court, but also in the public places, as they affect people of every walk of life in the present day India, particularly after the casteist and communal politics in the post-Independence period. Such concepts are enshrined in the Constitution of India are discussed here, to understand social, economic and political processes. As these concepts embrace each and every aspect of human life from birth to death and perhaps, even after, necessity arises to adapt and adopt Secularism and Social Justice in the right perspective. As they are also connected with the principles of human rights, study has to be made keeping in mind that such concepts, while applying for rights of certain groups do not violate or override the rights of other groups, as all groups belong to the same Indian society.

Social Justice – inserted from 03-01-1976: The Preamble of the Constitution of India itself speaks about 'a Sovereign Socialist **Secular** Democratic Republic' nature of the people of India and their resolution to secure all its citizens: '***Justice, social, economic and political***', thus implying ***Social Justice, Economic Justice and Political Justice***. Here also, the word 'secular' was inserted along with 'socialist' by the Constitution (42nd Amendment) Act 1976 (w.e.f 03-01-1977). However, nowadays, much emphasis is given to Social Justice, as along with this, other rights can automatically be claimed and achieved. Under Article 14, the Right of Equality is stressed, 'the State shall not deny any person equality before the law or the equal protection of the laws within the territories of India. Here, equal protection means the right to equal treatment in similar circumstances[1] both in the privileges conferred and in

[1] There have been many books, Supreme Court and High Court judgments in the context of the subject matter dealt with. Only few are mentioned for illustrative purposes. Readers are at liberty to refer to other books and references for exhaustive study:
The Supreme Court judgments quoted in the context are All India Reporter, mentioned as AIR. State of U.P v. Deoman, AIR 1960 S.C. 1125 (1131). For general interpretation of the Constitutional provisions, the following book is used:
Durga Das Basu, ***Shorter Constitution of India***, Prentice-Hall of India, New Delhi, 1994.

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liabilities imposed. The concept that 'all are equal before law' is the epitome of Jurisprudence.

Nature of Law: When 'law' is mentioned, it may be Imperative Law (Rules of action imposed on men by authority), Physical or scientific law (Rules formulating the uniformities of nature), Natural or moral law (Rules formulating the principles of natural justice), Conventional law (Rules agreed upon by persons for the regulation of their conduct towards each other), Customary law (Rules of action embodied in Customs), Practical or technical law (Rules of action for the attainment of practical ends), International law (Rules which govern sovereign States in their relations towards each other) and Civil law (the law of State as applied in State's courts of justice)[2]. Thus, in the evaluation of 'law', various factors of culture, tradition, heritage and other social processes have also been taken into account to govern the people of a society. Therefore, unless such factors are also taken into consideration for the analysis of the concepts of Social Justice and secularism, a true picture in the Indian context cannot be obtained.

Multi factors in Culture etc: Very often, it is said that India is a '***multi-cultural, multi-lingual, multi-ethnic, multi-religious***' nation, that too, ***a nation in making***, but social scientists have reservations about such axiom, as now, every State, town, village and street exhibit such 'multi' characteristics, because of the developments of science and technology, which have made men to come closer. That is why perhaps, our Constitution [Art. 51A (f)] talks about a '**Composite culture**'[3] evolved out of our rich heritage, and of course various ideologists discuss about '**unity in diversity**'.

There should be no discrimination: Thus, considering various social inabilities crept into society, Art. 15 (1) assures that State shall not discriminate against any citizen on grounds only of religion, race caste, sex, place of birth or any of them. Art. 15 (2) specifically elaborates that no citizen shall, on the above grounds, be subject to any disability, liability, restriction or condition with regard to – (a). access to shops, public restaurants and place of public entertainments; or (b). the use of wells, tanks, bathing ghats, roads and roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public, with the provisions that nothing in this article shall prevent the State making any special provision for women and children [15 (3)]; for the advancement of socially and educationally backward classes of citizens or for the scheduled castes and tribes [15 (4)].

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[2] Glanville Williams, ***Salmond on Jurisprudence***, Sweet & Maxwell Ltd., London, 1957, p.34-35.

[3] Art. 51 A (f) under Fundamental Duties inserted in 1976 by the Constitutional (42nd Amendment) Act.

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Reservation provision: Art. 16 (1) declares about the equality of opportunity or appointment to any office under the State with the Art. 16(2) that no citizen can be discriminated against on any factor as mentioned above. Considering backward classes, SC and STs, Art. 16(4) empowers the State to make provisions for the reservation of appointments. Taking secularism into considerations, 16(5) restricts Art. 16 to effect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Untoucahability abolished: To achieve Social Justice, as the man-made 'caste-system' and the practice of untouchability arising thereof hinder the social processes under modernization and secularization, it is tackled under Art. 17, "Untouchability" is abolished and its practice in any form forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. Of course, it can be read with the provisos of (a) and (b) of 15 (2), as it directly envisages the very same condition, but without mentioning it.

Freedom of speech, expression, etc: Art. 19 (1) gives all citizens the right to –

(a) freedom of speech and expression;
(b) assemble peaceably and without arms;
(c) form associations and unions;
(d) move freely throughout the territory of India;
(e) reside and settle in any part of the territory of India and
(f) practice any profession,

but with abundant cautious provisions of Articles 19 (2) to (6) to restrict such rights considering the various movements evolved and established during recent years on the basis of fundamentalism, communalism, sectarianism, linguistic and religious chauvinism, separatism and anti-nationalism leading to question the sovereignty and integrity of India and disturb the public order. The restrictive nature of the provisions clearly prove that all international human rights covenants have been taken into consideration, as the right of any citizen cannot violate the right of any other citizen. However, the above mentioned separatist movements under the guise of 'human rights' have started attacking government with orchestrated propaganda. Therefore, clause.2 as amended, takes care of existing situation to impose restrictions on the following grounds –

(i) Sovereignty;
(ii) Security of the State;
(iii) friendly relations with foreign States;
(iv) Public order
(v) Decency or morality

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(vi) Contempt of court / defamation and
(vii) Incitement to an offence.

Art. 20 provides protection of any individual from persecution and punishment for the same offence more than once, compulsion to be a witness against himself and the quantum of penalty inflicted on him. This is not only according to the principles of Natural Justice and Jurisprudence, but also to the established international covenants on human rights. Similarly, Art. 21 envisages about the protection of life or personal property and 22 about the legal position in arresting a person and the consequences arising thereof.

Art. 25 is very important as it deals not only with the 'Right to freedom of religion', but also lays down conditions which are essential for testing the secular nature of India and secularism followed by Indians in the process of march towards Social Justice. It is reproduced as follows:

25 (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and right freely to profess, practice and propagate religion.
(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
Explanation II: In the sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and reference to Hindu religious institutions shall be construed accordingly.

Many times applicable to Hindus, but not non-Hindus: Many judgments regarding this Article have clearly established the meaning and connotation of the expressions used and their implications. Sub-clause (b) of (2) accelerate social reform of Hindu society, eradicating practices and dogmas which affect the modernization or secularization processes, but do not form the essence of Hindu religion. But, it may be noted that such provision is not applied to non-Hindu religions. Explanation II provides the Constitutional connotation of the word 'Hindu' to include Sikhs, Jains and Buddhists. Though this expression is applicable only to the purpose of Art. 25 (2) (b)[4] and not to any other provision of the Constitution, it is evident that the common factors of Indian culture, tradition

[4] Punjab Rao v. Meshram, A. S.C.1179 (1184).

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and heritage have been taken into consideration to determine the character of 'Hindu'. This Article clearly shows as to how secular principles can be applied in the context of Social Justice, as many judgments[5] delivered prove that job reservation for the Backward Classes, SCs and STs has been made accordingly.

Minorities have separate rights: Art. 26 Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with law.

It may be noted here that in spite of the Rights guaranteed, several Acts have been held invalid, because of political and social bias crept into such Acts, proving that secular principles are applied only to a particular religious community leaving others for their special status.

Tax, taxation have to be secular: Art. 27. No person shall be compelled to pay taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The underlying concept in this Article is very significant considering the secular State of India. As India does not support any religion, it is against the principle of the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religion or religious denomination. But, in the post-Independence period, there have been instances as to how government has sanctioned funds to repair and maintain damaged places of worship and forced government machinery to carry out such 'sacred' duties forgetting the 'secular' principles.

No religious instruction in the Educational institutions: Art. 28 (1). No religious instruction shall be provided in any educational institution is administered by the State but has been established under any endowment or trust which requires religious instruction shall be imparted in such institution
(3). No person attending any educational instruction recognized by the State or receiving aid out of the State shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached

[5] Dippala v. Giri, A. 1958, A.P.724 (735)
Shyamsunder v. V. Sankar A.1950 Mys.27
Punjab Rao v. Meshram, A. S.C. 85.
Cf. Ramalingam v. Abraham, (1969) 1 S.C.C.24.
Chatuebhuj v. Moreswar, (1954) S.C.R (841)
Arumugam v. Rajagopal, A.1976 S.C.939 (para.17)

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hereto unless such person, or if such person is minor, his guardian has given his consent thereto.

Educational curriculum and secularism: Though there have been many judgments[6] pronouncing that what is religious, not moral education disassociated from any denominational doctrines, the academic study of the teaching and philosophy of any great saint of India and its impact on the Indian and world civilizations cannot be considered as 'religious' instruction, controversies have been persisting in deciding about the selection of such so called 'moral education' and 'great saint of India', because of political bias and prejudice coupled with fundamentalism and communalism. NCERT has given guidelines for the "Evaluation of Textbooks from the standpoint of National Integration" in 1986 with the following criteria for such evaluation:

1. Communalism,
2. Casteism and untouchability,
3. Regionalism,
4. Racialism,
5. Obscurantism and superstition.

In such guidelines the religious concepts, beliefs and metaphors of a particular faith are questioned and criticized, leaving other faiths untouched. As the above factors are not closely connected with the concepts of scial justice and secularism, but also with the Constitution, it can be seen from the above guidelines how communalism of one community is branded as religious intolerance and other is glorified as religious purity; casteism and untouchability of one religious community are condemned, but for such practices of other religious communities also, the former is blamed, as the members were originally from that religion and hence the social customs and practices are carried on in spite of their 'realized' and 'achieved' conversion[7]; Regionalism, Linguism and Racialism of certain groups are called into question at one time and supported other times, because of political motives; and obscurantism and superstition of one religious community are taken up for intellectual crusade, while others are simply ignored or not discussed at all. Now, there is a controversy raging about the rewriting of history for political purposes and based on ideology. One should carefully notice these

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[6] Nambudripad v. State of Madras, A. 1954 Mad.335.
D. A. V. College v. State of Punjanb (II), A. 1971 S.C.1737 (paras.24-26).
Suresh v. Union of India, A. 1975 Delhi 168 (para.1)

[7] Anthony Raj S.J, ***Caste discrimination against Dalit Christians in Tamilnadu: A Socio-Historical Analysis***, Vazhaitoppu, Madurai, 1987.
He gives the following reasons for the discrimination against the 'Dalit' Christians:
- ✞ The Government's injustice
- ✞ Partiality shown by the high caste Hindus
- ✞ Opposition of Dalit-Hindus
- ✞ Discrimination within the Churches and
- ✞ Attitude of high caste Christians.

He unwittingly accepts that 'caste system' exists in Christianity. Dalit Muslim organizations have also accepted that 'caste' exists among the converts.

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developments, as they affect the very secular fabric of our great country and therefore, steps be taken to counter such moves. Outright condemnation or over-glorification of any ideology will lead to fascism, then, one cannot think about Social Justice or secularism. Even in ideological struggle, the principles of the Constitution should not be sacrificed.

Cultural and Educational Rights: Now, let us turn to the Cultural and Educational Rights provided under Art.: 29:
(1) Any section of the citizens residing in territory of India or any part thereof having ***a distinct language, script or culture of its own*** shall have the right to conserve the same.
(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Though, the marginal note of the article mentions 'minority' rights, the rights conferred by Clause (1) are not restricted to a political minority in a State. As it is applicable to 'any section of citizen' whether they belong to the Minority or Majority community, the only condition being that such section must have a distinct language, script or culture of its own[8]. They need not constitute a religious or Linguistic minority as required under Art.30 (1)[9]. But, in spite of all established legal position and understanding, only narrow interpretation is given and politicians also act accordingly ignoring the significance of the Art. Thus, communal orientation is given in actual day to day life.

Minority institutions: Next comes the crucial article, which has raised much heated discussions and controversies, about the rights of minorities to establish and administer educational institutions:
30 (1): All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice;
30 (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause (inserted in 1978).
(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Art.30 and minority: Though the word 'minority' is not defined in the Constitution, from the various judicial pronouncements, its meaning can be understood as follows: According to the popular sense of the term it should refer to any community which is numerically les than 50% of the population of the

[8] St. Xavier's College v. State of Gujarat. A. 1974 S. C.1389.
[9] D. A. V. College v. State of Punjab (II), A. 1971 S.C.1737.

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State concerned e.g., Hindus in J & K and Christians in Kerala. Thus, the 'minority' referred to in Art. 30 must be a minority based on either religion or language but need not be both[10].

Discrimination in treatment in the administration of educational institutions: In recent judgments and happenings, discrimination in treatment in the administration of educational institutions run by non-minorities have been pointed out and accepted by the minority members themselves. In opening of new schools, creation of endowments, appointment of teachers, obtaining employment exchange list, admission of children as per communal roaster, formation of committees, code of conduct for teachers, disciplinary action against teachers and others, transfer of correspondence-ship or secretary-ship, withdrawal of recognition and taking over the management, though discrimination is very conspicuous, the government itself could not take any action because of the minority status[11].

Directive Principles and secularism: Coming to the Directive Principles, it can be noted that even though they cannot be enforceable by any court, the principles therein laid down are fundamental in the governance of the country and the State should apply these principles in making laws. To secure a social order for the promotion of welfare of the people and equal justice; to offer free legal aid; to organize village panchayat; right to work; to education and to public assistance in certain cases; to provide just and humane conditions of work, living wage etc., for workers, to secure uniform civil code; to promote educational and economic interests of SCs, STs and other weaker sections, to raise the level of nutrition and standard of living and to improve health and to protect monuments and objects of national importance provisions have been made. The intention of the government is very evident in providing such Directive Principles in the Constitution catering to the necessity of the changing Indian society. It is also evident that in the process of secularization, the Indian society may have to be treated as single entity as for as civil laws are concerned as the basic rights of all

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[10] Ibid.

[11] Many of the educational acts of various governments have been quashed by judicial judgments under Art.29 and 30:

AIR 1958, S. C. 956;
Rev. Fr. Proost v. State of Bihar 1969-2-SCR 73 AIR 1969-SC 465;
State of Kerala v. Mother Provincial AIR 1970-SC 2079;
AIR 974 SC 1389; Ahemadabad St. Xavier College Society and another etc., petitioners v. State of Gujarat;
Govt. of A. P. v. All Saints High School-AIR 1980 SC 1042
AIR 1984 SC 1757, Bihar State v. Talimi Mission;
The recent controversy over the Tamilnadu Private Schools (Regulation) Act 1973 and Tamilnadu Colleges (Regulation) Act, 1976 are well known.
A one day seminar organized by the Christian organizations at Pastoral Centre on 08-08-1992 on ***Minority Rights: For Whom?*** exposed many facts about the mal-administration of the minority institutions.

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Indians in the modern context are directed towards egalitarian society, removing all differences and discrimination existing in the name of religion, caste, creed, denomination, race, ethnicity, language, sex and so on. In enacting Acts ands Rules egalitarianism can be introduced to achieve Social Justice, only when people have full faith in secularism secularization helps a lot in society like India as most of the downtrodden and poor people has to be raised above the poverty line against all social barriers.

Seculaization vs Indianiization: Thus, secularization of Indian society includes secularization of all social processes that have been taking place from birth to death of any Indian. In such operation all factors of modernization, industrialization and westernization come into play. As Indians have unique culture, tradition, heritage and civilization, they have every right to apply such factors to suit their psychological, physical and social needs. Thus, in spite if external pressures and internal inhibitions modernization is traditionalized, industrialization indigenized and westernization Indianized. This type of absorptive and accommodative unique characteristic accounts for the true secular nature of India.

How complete secularization is possible in India?: Complete secularization cannot be achieved just by secularizing one religious community leaving other religious communities to thrive on fundamentalism, as many precedence created have already proved how of one religious fundamentalism on the political motive or otherwise encourages fundamentalism of another religious community. As the politicians are the great manipulators in India for decades exploiting the masses, politization of secular processes should be completely avoided at any cost. The members of all religious communities should be united in this regard for social progress. As casteist politics also divides the Indian society producing lop-sided effects affecting social equity, such category of politicians also should be kept out of the purview of secularism and Social Justice, as they can do more harm than good. Therefore, the members of various religions should have broad mind and liberal attitude towards social legislations which are enacted with an aim to remove obscurantist practices, outmoded customs and social evils. Educated elite should come forward to allay the fears raised in the minds of common people by the fundamentalist and fanatic elements.

The Constitution of India and the Acts made there under, show how many legislations regarding reforms in customs of marriage, untouchability, inheritance, divorce etc., have been accepted without much opposition by the Hindu community in order to give equal status to women. Definitely education, universalistic ideology and rationalism helped them to change with times. Relevant Constitutional provisions have already been mentioned to show how the delicate, but fundamental issues like -

- untouchability [Art.15 (2) and 17],

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- throwing open of religious institutions to all classes of Hindus [Art. 25 (2) (b)]
- reservation for the 'socially and educationally backward classes' [Art. 15 (4)] , any backward class of citizen [Art. 16 (4)] etc.,

are boldly tackled applying the principles of Social Justice. Therefore, applying the principles of secularism, other religions may also be dealt with accordingly for the welfare of their respective women and other weaker members and denominations. Such weaker sections of one religious community cannot be compared with that of other for the reservation and other social institutions on communal lines.

Westernization, Indianizaion and secularization: If all citizens are to be treated equal with equal rights in all aspects, at national level, the religious factor should be applied only for individual according to his willingness. If any individual wants to be secular for social and national progress and development, he need not be communalized with fundamentalist doctrines. There has been an impression among the section of religious communities that secularization, modernization or westernization means denial of their own identity. Indianization is often interpreted as Hinduization and Sanskritization as the process of cultural mobility in the traditional social structure. Though social scientists have recognized these processes for development, progress and social equity, they are countered by Inculturation, Islamization and other processes[12]. The interesting point to be noted here is that Inculturation[13] is adapted and adopted by Christians in India to Indianize converted Christians or leave them as such in their own cultural conditions, whereas Islamization[14] is the process by which all traces of Hinduism among the converted Muslims are completely removed imposing Arabic cultural traits and characteristics. If this is the problem of understanding secularism and culture of India, more complication is introduced by claiming reservation for such converted Christians and Muslims at par with Hindus SCs and STs. Though, there is no Constitutional provision, such

[12] Tribalization and Dravidianization processes also come under this category.

[13] Sitaram Goel, ***Cathoilc Ashrams: Adopting an Adapting Hindu Dharma***, Voice of India, New Delhi, 1988.

Victor J. F. Kulanday, ***The Paganization of the Church in India***, No. 6, Nimmo Road, Mylapore, Chennai – 6004, 1986.

He roams as a Hindu sanyasi with saffron robes and with Hindu name "Swami Kulandai Swami", however, has been talking and writing against Hindu.

The above books two different views about the "Inculturation" program of Vatican – first exposing the duplicity of Christians using the symbols of Hindu tradition, culture, heritage etc., to fool gullible Hindus for conversion and the latter opposing such "Inculturation" fearing that Christianity might be diluted and even merged with Hindu religion!

[14] Katherine P. Ewing,, ***Shariat and Ambiguity in South Asian Islam***, Oxford University Press, 1988. It is collection of papers presented for a conference, "South Asian Islam: Moral Principles in Tension" held at Pennsylvania deals with "Islamisation" and certain ambiguous i.e, traditional and inherited practices followed by Muslims.

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movements are gathering momentum under 'Dalit' banner[15]. But, it is unfortunate that the ideas of anti-nationalism and secession are sown in the minds of the ideologists of such movements thus, defeating the very purpose of achieving Social Justice[16]. As such ideologists think and work with the imported hypotheses and theories alien to the Indian social conditions, they totally deviate from the principles of secularism and thus from Social Justice also.

Conclusion: In view of the above, the Social justice can be achieved through the processes of secularism:

1. Utopian concepts of egalitarianism in all spheres of Indians can be achieved only by true and complete secularization of Indian society leading to Social Justice.
2. Therefore, religion should definitely be treated as personal concept instead of putting it on national agenda.
3. As the ideals of Social Justice can be materialized by actual commitment, keeping reality in mind, all efforts should be taken to have uniform civil and criminal laws in the Indian context.
4. If the secularization process is completed in true spirit, then there will not be any objection to such uniform civil code.
5. For this broad minded, educated and liberal scholars of secular but religious personalities should be consulted without any discrimination on any factor.
6. In such process, not only the Indian Constitution, but also all Acts and rules can be secularized to the satisfaction of all sections of Indian society.
7. But, unless all Indians follow them strictly, the ideals may not be implemented.
8. Therefore, the people should not only be taught about their rights, but also others should sincerely help them to get their rights with responsibility.

Thus, it is believed that Indians would achieve Social Justice through secular principles.

[15] The word 'Dalit' is interpreted differently by the vested interested groups. The literary word now has over political, racial and separatist connotation, which is not warranted.

[16] With leftist and other ideologies, autonomist, linguistic, anti-immigrant, religious, tribal and irredentist movements exploit people that 'India is not a nation, but a country with many nations, therefore each nationality or nation can claim the right to self-determination with the right of secession thereby a separate nation can be formed with their characteristic race, culture, religion, language or any other nationality factor.

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